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Security Information

OGC Has Reviewed

26 March 1952

THROUGH: Finance Division
Comptroller
Office of General Counsel

Lump Sum Payment of Leave to Staff Employees Transferring to Staff Agent Status

1. The Audit office Notice [redacted] enclosed with the attached memorandum from the Finance Division, dated 10 January 1952, concerning the above subject, questions the propriety of lump sum payments made to staff employees at the time of resignation and appointment to staff agent status and requests a decision as to the requirement for refund from the individuals so paid.

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2. Section 1 of the Act of 21 December 1944, 58 Stat. 845, 5 USC 61(b), requires that when an employee is separated from the service he shall be paid compensation in a lump sum for all accumulated and accrued annual or vacation leave to which he is entitled under existing law. However, if he is reemployed by the U. S. Government under the same leave system prior to the expiration of the period covered by such leave payment, he must, under the Act, refund to the employing agency an amount equal to the compensation covering the period between the date of reemployment and the expiration of such leave period, in which case the employee is entitled to a recredit of the leave represented thereby. Also, in section 3 of said act (5 USC 61(d)), it is provided that a lump-sum payment for annual leave be made to an employee when he transfers to agencies under different leave systems. While section 3 contains no specific provision requiring refund of a lump-sum leave payment in the event an employee is again transferred under the same leave system prior to the expiration of the period covered by the lump-sum leave payment, nevertheless, the decisions of the Comptroller General have regarded the refund requirement equally applicable even though the lump-sum leave payments were predicated upon a transfer to a different leave system rather than an outright separation from the service. See 27 Comp. Gen. 472; 29 id. 325. To rephrase the above, if an employee is actually separated for one or more days prior to reappointment in another position under the same leave system, a lump sum leave payment is required and the employee will be subject to the requirement of section 1 of the Act of 21 December 1944, regarding refunds upon reemployment. (24 Comp. Gen. 532)

3. If the payments in question had been made in accordance with the above Act, there would be no question of whether a refund from the individuals would be required. However, the facts presented by the attached memoranda, indicate that there was no break in service with this Agency let alone an actual separation for one or more days and

SECRET

and reemployment by another agency. It is apparent, therefore, that the Act neither contemplates nor covers the payments made in this instance. Based on security considerations and in the absence of specific Agency regulations prohibiting such actions, these persons were directed to resign their employment with the Agency, were paid a lump sum for accumulated annual leave and dropped from the normal Agency rolls, to be picked up again the following day as Staff Agents under pseudonyms.

4. In the absence of the security considerations involved, normal legal considerations would have precluded the lump sum payments and would have required a transfer of all accumulated leave.

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5. The above considerations are also applicable to the two individuals included in the audit exception, who, after resignation, were picked up and paid through a cover organization which is wholly supported and controlled by CIA. Although these individuals changed their place of duty, they still continued as employees of the Agency.

6. The attached memorandum from the Finance Division to General Counsel points out that this method of operation was undertaken with the approval of all interested Agency divisions as the most secure interim method of transfer of personnel to covert status. The payments were made by the Finance Division in accord with this interim procedure and were accepted by the individuals in entire good faith, as an appropriate action by the Agency in effecting this transfer. In accord with the foregoing, it is the opinion of this office that the later change of policy evidenced in [] the Confidential Funds Regulations does not purport to have retroactive effect on these lump sum payments. The fact that there was a change in policy is evidenced by the lack of any specific mention of this procedure, which had been one of the matters under consideration by the task force and senior review committee in the deliberations antecedent to the publication of [] the Confidential Funds Regulations. Section [] issued under the effective date of 16 May 1951, similarly applied to employees or agents integrated into or transferred to another agency or organization, Government or private, and in no way affected the payments that were continued until 10 August 1951.

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7. The failure to authorize the payment of lump sum leave to staff employees transferring to staff agent status in [] Confidential Funds Regulations, having been construed as a reversal in policy as to

SECRET
Security Information

future payments by the Finance Division, does not in any way set up a requirement for refund of the payments previously made. The interim procedure outlined above was not legally objectionable. That procedure has not become objectionable per se by the implementation of the new regulations.

8. It is our opinion that no refund need be required in the cited or similar cases. The absence of specific Confidential Funds Regulations authority was not controlling in the presence of the coordination and approval outlined for the implementation and carrying out of the interim procedure.

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